

# **ATTACHMENT A**



Department of Justice  
Canada

Ministère de la Justice  
Canada

British Columbia Regional Office  
900 - 840 Howe Street  
Vancouver, BC V6Z 2S9

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File: 1-263559

May 20, 2008

**VIA FEDEX COURIER**

Vincent T. Lombardi  
Assistant United States Attorney  
U.S. Attorney's Office  
Western District of Washington  
700 Stewart Street, Suite 5220  
Seattle, WA 98101 USA

Dear Mr. Lombardi:

**Re: Kyle Gianis**  
**MLAT Request from the United States of America dated April 3, 2008**

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Please find enclosed the following materials:

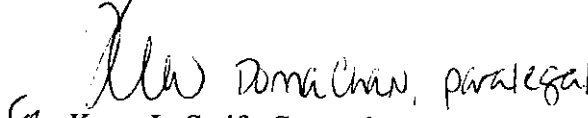
1. a Court-certified copy of the sending order of the Honourable Madam Justice Gerow dated May 20, 2008;
2. a Court-certified copy of the Report of the Honourable Madam Justice Gerow dated May 20, 2008 in relation to the examination of Adam Tsoukalas which took place on May 14, 2008, and the examination of David Youngberg which took place on May 15, 2008;
3. the original and one copy of the video recording (in Mini DV format) of the examination of Adam Tsoukalas and David Youngberg; and
4. the evidence (17 exhibits) you showed to Adam Tsoukalas and David Youngberg during their examination.

We will e-mail you an electronic copy of the transcript of the examinations. It is our understanding that you will receive the original certified transcripts directly from Mindi L. Pettit of Seattle Deposition Reporters.

Please note that the materials mentioned above may only be used for the purpose stated in the U.S. Request for Assistance dated April 3, 2008. In accordance with Article IX of the *Treaty Between the Government of Canada and the Government of the United States of America on*

*Mutual Legal Assistance in Criminal Matters*, if the United States of America wishes to make further use of these records, it must first seek the consent of the Government of Canada.

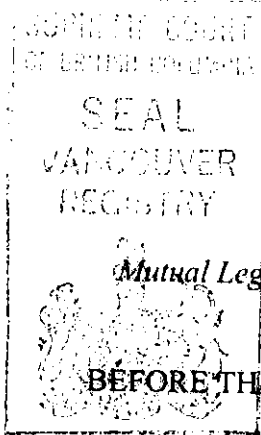
Sincerely,

  
for Kerry L. Swift, Counsel  
International Assistance Group

Enclosures

copy: Gisella Gagliardi, Counsel, International Assistance Group, Department of Justice, Ottawa

Court File: OTR080129  
Vancouver Registry



**IN THE SUPREME COURT OF BRITISH COLUMBIA**

IN THE MATTER OF

an *ex parte* application pursuant to subsection 20(1) of the

*Mutual Legal Assistance in Criminal Matters Act*, R.S.C. 1985, c. 30 (4<sup>th</sup> Supp.), as amended

BEFORE THE HONOURABLE

MADAM JUSTICE GEROW

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)  
)

TUESDAY, THE

20TH DAY OF MAY, 2008

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**SENDING ORDER**

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UPON THE *EX PARTE* APPLICATION made by the Attorney General of Canada coming on for hearing before me this day;

AND UPON HEARING Kerry L. Swift, counsel on behalf of the Attorney General of Canada;

AND UPON READING:

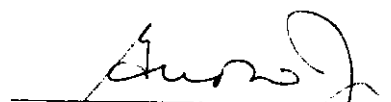
1. the Application filed in this matter;
2. the *Treaty between the Government of Canada and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters*;
3. the Report by Madam Justice Gerow dated May 20, 2008 and made pursuant to subsection 19(1) of the *Mutual Legal Assistance in Criminal Matters Act*; and
4. the Evidence-Gathering Order of the Honourable The Associate Chief Justice Dohm made April 30, 2008.

AND UPON BEING SATISFIED that the said Report of Madam Justice Gerow is in accordance with section 19(1) of the *Mutual Legal Assistance in Criminal Matters Act*;

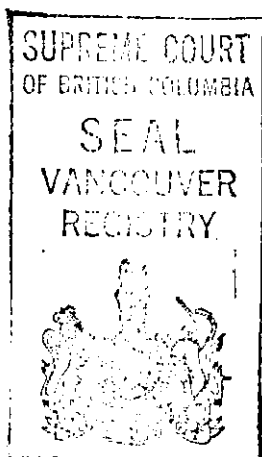
THIS COURT ORDERS that the said Report and the items referred to in it be sent to the United States of America.

Done at Vancouver, B.C., this 20 day of May, 2008.

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The Honourable Madam Justice Gerow

Court File: OTR080129  
Vancouver Registry



**IN THE SUPREME COURT OF BRITISH COLUMBIA**

IN THE MATTER OF  
subsection 19(1) of the *Mutual Legal Assistance in Criminal Matters Act*

AND IN THE MATTER OF  
United States of America

vs.  
Kyle Gianis

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**REPORT OF COMMISSIONER**

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I, Madam Justice Gerow, a Judge of the Supreme Court of British Columbia, report pursuant to subsection 19(1) of the *Mutual Legal Assistance in Criminal Matters Act*, R.S.C. 1985, c. 30 (4th Supp.) (the "*Act*"), that:

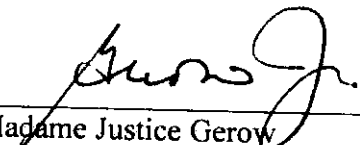
1. On April 30, 2008 the Honourable The Associate Chief Justice Dohm of the Supreme Court of British Columbia issued an Evidence-Gathering Order pursuant to subsection 18(1) of the *Act* requiring Adam Tsoukalas ("Tsoukalas") of 60 - 9864 151st Street, Surrey, British Columbia and David Youngberg ("Youngberg") of 14985 99A Avenue, Surrey, British Columbia, to appear before a Judge of the Supreme Court of British Columbia to be examined on oath or solemn affirmation for the prosecution in the matter of *United States v. Kyle Gianis* (CR04-334JCC).
2. The *viva voce* examination of Tsoukalas took place on Wednesday, May 14, 2008 between approximately 10:59 a.m. and 3:33 p.m. in Courtroom 71 at the Supreme Court of British Columbia, 800 Smithe Street, Vancouver, British Columbia.
3. The *viva voce* examination of Youngberg took place on Thursday, May 15, 2008 between approximately 10:04 a.m. and 11:51 a.m. in Courtroom 71 at the Supreme Court of British Columbia, 800 Smithe Street, Vancouver, British Columbia.

4. The examination of Tsoukalas and Youngberg were video recorded by Commercial Electronics Ltd. of Vancouver, British Columbia.
5. The examination of Tsoukalas and Youngberg were transcribed by Mindi L. Pettit, Certified Court Reporter, of Seattle Deposition Reporters of Seattle, Washington.
6. Present at the Examination of Tsoukalas were:
  - (a) Vincent T. Lombardi, Assistant United States Attorney;
  - (b) Peter A. Camiel, Counsel for Kyle Gianis;
  - (c) Peter Kane Mair, Counsel for Kyle Gianis (via video link);
  - (d) Kyle Gianis, Defendant (via video link);
  - (e) Brian Faria, Special Agent, U.S. Immigration and Customs Enforcement; and
  - (f) Kerry L. Swift, Counsel for the Attorney General of Canada on behalf of the United States of America;
7. Present at the Examination of Youngberg were:
  - (a) Vincent T. Lombardi, U.S. Prosecuting Attorney;
  - (b) Peter A. Camiel, Counsel for Kyle Gianis;
  - (c) Peter Kane Mair, Counsel for Kyle Gianis (via video link);
  - (d) Kyle Gianis, Defendant (via video link);
  - (e) Thomas W. Hillier, II, Federal Public Defender, Counsel for Youngberg;
  - (f) Brian Faria, Special Agent, U.S. Immigration and Customs Enforcement; and
  - (g) Kerry L. Swift, Counsel for the Attorney General of Canada on behalf of the United States of America;
8. Attached to this Report is the following material:
  - (a) a photocopy of the Commission;
  - (b) a photocopy of the Instructions to Commissioner, which contain my oath in relation to carrying out my duties as the Commissioner in this matter;
  - (c) a photocopy of the Certificate of Commissioner;

- (d) a photocopy of the transcript of the proceedings prepared by Mindi L. Pettit;
- (e) a photocopy of the video mini DV cassette tapes of the examination proceedings prepared by Commercial Electronics Ltd.;
- (f) the following evidence was shown by Assistant U.S. Attorney Vincent T. Lombardi to Tsoukalas and Youngberg:
  - (1) Exhibit 1 - photograph of Youngberg's car (front view);
  - (2) Exhibit 2 - photograph of Youngberg's car (side view);
  - (3) Exhibit 3 - photograph of Youngberg's car (back view);
  - (4) Exhibit 4 - photograph of contents of trunk of Youngberg's car;
  - (5) Exhibit 5 - photograph of two blue barrels inside the trunk of Youngberg's car;
  - (6) Exhibit 6 - photograph of one blue barrel (with lid on);
  - (7) Exhibit 7 - photograph of one blue barrel (with lid off);
  - (8) Exhibit 8 - photograph of a warning label adhered to a blue barrel;
  - (9) Exhibit 9 - photograph of a handgun;
  - (10) Exhibit 10 - photocopy of a U.S. Customs Declaration form containing the name Adam Tsoukalas;
  - (11) Exhibit 11 - photocopy of a U.S. Customs Declaration form containing the name David Youngberg;
  - (12) Exhibit 12 - photocopy of a handwritten list of calls in relation to telephone number 604-317-7057 (1 page);
  - (13) Exhibit 13 - photocopy of a handwritten list of calls in relation to telephone number 778-888-8227 (2 pages);
  - (14) Exhibit 14 - photocopy of a Plea Agreement signed by Adam Tsoukalas on June 15, 2004 in the matter of *United States of America v. Adam Tsoukalas* (CR04-0273C) (8 pages);
  - (15) Exhibit 15 - photocopy of a Plea Agreement signed by David Youngberg on June 15, 2004 in the matter of *United States of America v. David Youngberg* (CR04-281C) (8 pages);

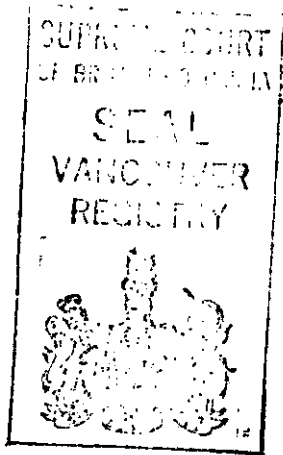
- (16) Exhibit 16 - photocopy of the sworn statement of Adam Tsoukalas dated March 12, 2004 (3 pages) and Fingerprint Examination Report of Brian Faria dated February 5, 2008 (1 page); and
  - (17) Exhibit 17 - photocopy of the sworn statement of David Youngberg dated March 13, 2004 (4 pages); drug analyst report of Keith T. Chan dated 05/12/2004 (2 pages); fax cover sheet from Brian Faria to Vince Lombardi dated March 17, 2004 with attachment (4 pages) and a duplicate page of the said fax cover sheet (1 page).
9. I have fulfilled my obligations as Commissioner pursuant to the Evidence-Gathering Order and the terms in the Commission.

Dated May 20, 2008, in the City of Vancouver, Province of British Columbia.

  
\_\_\_\_\_  
Madame Justice Gerow  
Commissioner  
Supreme Court of British Columbia  
800 Smithe Street  
Vancouver, British Columbia



Court File: OTR080129  
Vancouver Registry



**IN THE SUPREME COURT OF BRITISH COLUMBIA**

IN THE MATTER OF  
an *ex parte* application pursuant to subsection 17(2) of the  
*Mutual Legal Assistance in Criminal Matters Act*

AND IN THE MATTER OF  
the United States of America

v.

Kyle Gianis

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**COMMISSION**

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TO: The Honourable Madam Justice Gerow

YOU HAVE BEEN APPOINTED A COMMISSIONER for the purpose of taking evidence in this proceeding now pending in this court by order of the court made on April 30, 2008 (the "Order"), a copy of which is attached.

YOU ARE GIVEN FULL AUTHORITY to do all things necessary for taking the evidence mentioned in the order authorizing this commission.

You are to send this court a certified transcript of the evidence taken, together with this commission, forthwith after the transcript is completed.

In carrying out this commission, you are to follow the terms of the attached order, as well as the instructions contained in this commission.

THIS COMMISSION is signed and sealed by order of the court.

Date:

May 2/08

Issued by:

Mary Ellen Pearce

Local Registrar

800 Smithe Street, Vancouver, B.C.

Court File: OTR080129  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

IN THE MATTER OF  
an *ex parte* application pursuant to subsection 17(2) of the  
*Mutual Legal Assistance in Criminal Matters Act*

AND IN THE MATTER OF  
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**INSTRUCTIONS TO COMMISSIONER**

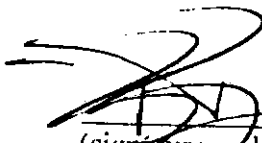
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TO: The Honourable Madam Justice Gerow


1. This commission is to be conducted in accordance with Rule 12 of the *British Columbia Supreme Court Criminal Rules*, a copy of which is attached, to the extent that it is possible to do so. The law of Canada applies to the taking of the evidence.
2. Before acting on this commission, you must take the oath (or affirmation) set out below. You may do so before any person authorized to do so under the laws of British Columbia.

I, LAURA B. GEROW swear (or ~~affirm~~) that I will, according to the best of my skill and knowledge, truly and faithfully and without partiality to any of the parties take the evidence of the witnesses examined under this commission, and cause the evidence to be transcribed and forwarded to the court. (*In an oath, conclude: So help me God.*)

Sworn (or Affirmed) before me in the City of Vancouver, Province of British Columbia, this 2nd day of May, 2008.

  
(signature and office of  
person before whom oath or  
affirmation is taken)

A Judge of the  
British Columbia  
Supreme Court  
B. BROWN J.

  
(signature of Commissioner)

page 1 of 4

3. The examining party is required to give the persons to be examined notice of the examination and, where the order so provides, to pay attendance money to the persons to be examined.
4. You must arrange to have the evidence before you recorded and transcribed by a court reporter of the United States of America. You are to administer the following oath (or affirmation) to each person who records and transcribes the evidence:

You swear (or affirm) that you will truly and faithfully record and transcribe all questions put to the witnesses and their answers in accordance with the directions of the commissioner. (*In an oath, conclude: So help you God.*)

5. You must arrange to have the evidence before you recorded by a videographer.
6. You are to administer the following oath (or affirmation) to the witnesses whose evidence is to be taken:

You swear (or affirm) that the evidence to be given by you touching the matters in question between the parties to this proceeding shall be the truth, the whole truth, and nothing but the truth. (*In an oath, conclude: So help you God.*)

7. Where a witness does not understand the language or is deaf or mute, the evidence of the witness must be given through an interpreter. You are to administer the following oath (or affirmation) to the interpreter:

You swear (or affirm) that you understand the \_\_\_\_\_ language and the language in which the examination is to be conducted and that you will truly interpret the oath (or affirmation) to the witness, all questions put to the witness and the answers of the witness, to the best of your skill and understanding. (*In an oath conclude: So help you God.*)

Court File: OTR080129  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

IN THE MATTER OF  
an *ex parte* application pursuant to subsection 17(2) of the  
*Mutual Legal Assistance in Criminal Matters Act*

AND IN THE MATTER OF  
United States of America  
v.  
Alex Gianis

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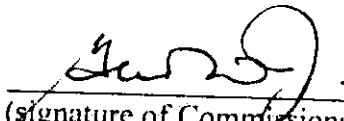
**CERTIFICATE OF COMMISSIONER**

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I, L. B. GEROW, a Judge of the Supreme Court of British Columbia, certify that:

1. I administered the proper oath (or affirmation) to the persons who recorded and transcribed the evidence; to the witnesses, the transcripts of whose evidence are attached, and to any interpreter through whom the evidence was given.
2. The evidence of the witnesses was properly taken.
3. The evidence of the witnesses is accurately transcribed.

May 20/08  
Date

  
(signature of Commissioner)  
L.B. GEROW, J.  
(name of Commissioner)